



Comhairle Cathrach Chorcaí Cork City Council

Halla na Cathrach, Corcaigh - City Hall, Cork - T12 T997

Walter O'Grady,
273 Blarney Street,
Cork,
T23 N6V2.

11/07/2023

RE: Section 5 Declaration R786/23, 273 Blarney Street, Cork, T23 N6V2.

A Chara,

With reference to your request for a Section 5 Declaration at the above-named property, received on 15th June 2023, I wish to advise as follows:

In view of the above and having regard to:

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended),
- Articles 6, 9 and 10 and Part 1 of Schedule 2 of the Planning and Development Regulations 2001 – 2018,

The Planning Authority considers that –

the use of the flat roof as a deck at 273 Blarney Street, Cork **IS DEVELOPMENT** and **IS NOT EXEMPTED DEVELOPMENT**.

Under Section 5(3)(a) of the Planning and Development Act, 2000, you may, on payment of the appropriate fee, refer this declaration for review by An Bord Pleanála within 4 weeks of the date it is issued, 11th July 2023.



We are Cork.

Is mise le meas,



Kate Magner
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council

PLANNER'S REPORT Ref. R786/23		Cork City Council Culture, Community and Placemaking
Application type	Section 5 Declaration	
Description	Is the use of a flat roof as a deck at 273 Blarney Street, Cork development and if so, is it exempted development.	
Location	273 Blarney Street, Cork T23 N6V2	
Applicant	Walter O'Grady	
Date	11/07/2023	
Recommendation	<i>Is Development and Is Exempted Development</i>	

In this report 'the Act' means the Planning and Development Act 2000 (as amended) and 'the Regulations' means the Planning and Development Regulations 2001 (as amended), unless otherwise indicated.

1. REQUIREMENTS FOR A SECTION 5 DECLARATION

Section 5(1) of the Planning and Development Act 2000 as amended states,

5.—(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

The requirements for making a section 5 declaration are set out in the Act.

2. THE QUESTION BEFORE THE PLANNING AUTHORITY

In framing the question to the planning authority, the applicant states in Q2 of the application form:

Is the use of a flat roof as a deck at 273 Blarney Street, Cork development and if so, is it exempted development?

Additional Details Regarding Question/ Works/ Development

The applicant states:

The flat roof is used as a deck as shown in the attached photos and sketch. Some information that may be relevant is:

Purpose

- *The roof was an obvious space to extent the outdoor living space of my small city house. it adds to the enjoyment of the home and utilises what would other be just another unused space within the city.*

Structure

- *The deck is consistent with the neighbouring decks and it has a similar appearance.*
- *Apart from some decorative elements, the only noticeable development done to the roof is the addition of the handrail.*

Height

- *The houses from 271 to 275 Blarney Street have first-floor level back gardens and decks because of the natural ground level, the gradient of the area, and original cross-site retaining wall.*
- *My neighbours each built decks on their gardens to create usable, flat outdoor spaces. Building a ground level deck on these gardens means it becomes a first floor deck relative to the houses.*
- *A ground deck on the garden or one of the roof would be identical in height.*

Privacy

- *In practice, it is impossible to have much rear privacy for this row of houses due to the neighbouring high gardens.*
- *The north neighbour's house overlooks all the back gardens due to its elevated ground level.*
- *The roof deck does not materially affect the use of my neighbours' outdoor space or their privacy because a ground deck on my garden would have the same effect relative to them.*
- *I engaged with my west neighbour before building the deck to ensure they were satisfied. The house to my east is derelict.*

Safety

- *The flat roof had become a de-facto extension of the outdoor space because it was easy to step onto it from the high garden. Therefore, the handrail and the extra upper stairs section provided improved safety when added.*

Nature

- *Putting the deck on the roof instead of covering the garden like my neighbours, allows plants and other vegetation to be grown. It adds a little more green space to the city's limited natural environment.*

3. SITE DESCRIPTION

The subject site is located on Blarney Street. The subject site comprises a single storey mid-terrace dwelling. The dwelling has at some point been extended to the rear. The rear extension/ annex comprises a flat roof and there is a deck area on top of same (subject to this section 5). The site is sloping northwards and rises steeply to the rear.

4. PLANNING HISTORY

Planning Applications

None.

Section 5

Ref: R522.19

Description: Whether the installation of rooflights on the front/ south roof elevation is or is not exempted development.

Outcome: Constitutes development; is exempted development.

5. LEGISLATIVE PROVISIONS

5.1 The Act

Section 2(1),

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1),

In this Act, "development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or 'the making of any material change in the use of any structures or other land'

Section 4(1)(h),

The following shall be exempted developments for the purposes of this Act-development consisting of the carrying out of works for the maintenance, improvement, or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

Section 4(2),

Section 4(2) provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations 2001-2013.

Section 5(1),

(See section 1 of this report)

Section 177U (9) (screening for appropriate assessment)

In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

5.2 The Regulations

Article 5(2)

In Schedule 2, unless the context otherwise requires, any reference to the height of a structure, plant or machinery shall be construed as a reference to its height when measured from ground level, and for that purpose "ground level" means the level of the ground immediately adjacent to the structure, plant or machinery or, where the level of the ground where it is situated or is to be situated is not uniform, the level of the lowest part of the ground adjacent to it.

Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9

Article 9 sets out restrictions on exemptions specified under article 6.

(Article 6) Schedule 2, Part 1, Class 1

Classes 1-8 relate to development within the curtilage of a house and Class 1 relates to "the extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house."

Schedule 2, Part 1, Class 1

Exempted Development — General

Column 1 Description of Development	Column 2 Conditions and Limitations
<p><i>Development within the curtilage of a house</i></p> <p>CLASS 1 <i>The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.</i></p>	<ol style="list-style-type: none"> 1. <ol style="list-style-type: none"> a) <i>Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres</i> b) <i>Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.</i> c) <i>Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.</i> 2. <ol style="list-style-type: none"> (a) <i>Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.</i> (b) <i>Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.</i> (c) <i>Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.</i> 3. <i>Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</i> 4. <ol style="list-style-type: none"> (a) <i>Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.</i> (b) <i>Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.</i> (c) <i>The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.</i>

Column 1 Description of Development	Column 2 Conditions and Limitations
	<p>5. <i>The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.</i></p> <p>6. (a) <i>Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</i></p> <p>(b) <i>Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</i></p> <p>(c) <i>Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.</i></p> <p>7. <i>The roof of any extension shall not be used as a balcony or roof garden.</i></p>

6. ASSESSMENT

The purpose of this report is to assess whether or not the matter in question constitutes development and whether its fall within the scope of exempted development. Matters pertaining to the acceptability of the proposal in respect of the proper planning and sustainable development of the area is not a consideration under section 5.

6.1 Development

The first issue for consideration is whether or not the matter at hand is ‘development’.

‘Development’ as defined in the Act (3)(1) comprises two possible chief components: ‘the carrying out of any works on, in, over or under land’, or ‘the making of any material change in the use of any structures or other land’. In order to ascertain whether or not the subject use is considered to be development as so defined, consideration must first be given to whether any works on, in, over or under land have or will be carried out, and secondly to whether any material change in the use of any structures or other land have or will take place.

‘Works’ is defined in section 2(1) of the Act as ‘the carrying out of any works on, in, over, or under land’ including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal, and in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.’

The use of the flat roof of the rear extension for a decking area included construction and falls within the definition of ‘works’. Therefore, the proposal constitutes development within the meaning of the Act.

CONCLUSION: Is development

6.2 Exempted development

The next issue for consideration is whether or not the matter at hand is exempted development. Section 2(1) of the Act defines 'exempted development' as having 'the meaning specified in section 4' of the Act (which relates to exempted development).

Section 4(3) of the Act states that exempted development either means development specified in section 4(1) or development which is exempted development having regard to any regulations under section 4(2).

I consider that the proposal comes within **subsection (2) of section 4**, i.e. the Regulations, and not subsection (1).

Section 4(2)

It is therefore necessary to consider whether the use of the flat roof of the rear extension as a decking area comes under the scope of section 4(2) (i.e. exemptions specified in the Regulations), having regard to the use of the word 'or' in section 4(3).

I consider that article 6 and **Class 1** applies, as the proposal relates to the use of a flat roof rear extension for the provision of balcony/ roof garden.

Condition/ limitation 7 of Class 1 states that the '*roof of any extension shall not be used as a balcony or roof garden.*'

The proposal conflicts with this limitation.

CONCLUSION: Is not exempted development.

7. ENVIRONMENTAL ASSESSMENT

7.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No 3) Regulations 2011) and Schedule 7 of the Planning and Development Regulations 2001 (as amended) it is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly, it is considered that an environmental impact statement is not required to be submitted.

7.2 Screening for Appropriate Assessment

Section 177U (9) of the Act requires planning authorities to screen applications for a section 5 declaration for appropriate assessment. The provisions of the *Habitats Directive*, the *Appropriate Assessment Guidelines for Planning Authorities 2009* (revised 2010) and the Act are noted. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of the European sites referred to above. Accordingly, it is considered that appropriate assessment is not required.

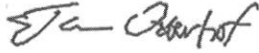
8. RECOMMENDATION

It In view of the above and having regard to –

- Section 2, 3 and 4 of the Planning and Development Act 2000 as amended, and
- Articles 6, 9, and 10 and Part 1 of Schedule 2 of the Planning and Development Regulations 2001 to 2018

The Planning Authority considers that –

The use of the flat roof as a deck at 273 Blarney Street, Cork **IS DEVELOPMENT** and **IS NOT EXEMPTED DEVELOPMENT**.



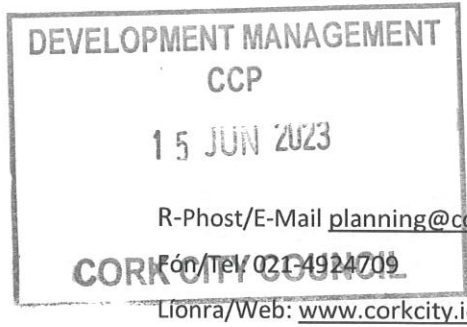
Jan Oosterhof
A/ Executive Planner
10/07/2023



Martina Foley
A/ Senior Executive Planner
10/07/2023

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

Community, Culture & Placemaking Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.



SECTION 5 DECLARATION APPLICATION FORM
under Section 5 of the Planning & Development Acts 2000 (as amended)

1. NAME OF PERSON MAKING THE REQUEST

Walter O'Grady

2. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT

273 Blarney Street, Cork, T23 N6V2

3. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

Sample Question: *Is the construction of a shed at No 1 Wall St, Cork development and if so, is it exempted development?*

Note: only works listed and described under this section will be assessed under the section 5 declaration.

Is the use of a flat roof as a deck at 273 Blarney Street, Cork development and if so, is it exempted development?

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

The flat roof is used as a deck as shown in the attached photos and sketch.

Some information that may be relevant is:

Purpose

- The roof was an obvious space to extend the outdoor living space of my small city house. It adds to the enjoyment of the home and utilises what would otherwise be just another unused space within the city.

Structure

- The deck is consistent with the neighbouring decks and it has a similar appearance.
- Apart from some decorative elements, the only noticeable development done to the roof is the addition of the handrail.

Height

- The houses from 271 to 275 Blarney Street have first-floor level back gardens and decks because of the natural ground level, the gradient of the area, and the original cross-site retaining wall.
- My neighbours each built decks on their gardens to create usable, flat outdoor spaces.
- Building a ground-level deck on these gardens means it becomes a first-floor deck relative to the houses.

- A ground deck on the garden or one on the roof would be identical in height.

Privacy

- In practice, it is impossible to have much rear privacy for this row of houses due to the neighbouring high gardens.
- The north neighbour's house overlooks all the back gardens due to its elevated ground level.
- The roof deck does not materially affect the use of my neighbours' outdoor space or their privacy because a ground deck on my garden would have the same effect relative to them.
- I engaged with my west neighbour before building the deck to ensure they were satisfied. The house to my east is derelict.

Safety

- The flat roof had become a de-facto extension of the outdoor space because it was easy to step onto it from the high garden. Therefore the handrail and the extra upper stairs section provided improved safety when added.

Nature

- Putting the deck on the roof instead of covering the garden like my neighbours, allows plants and other vegetation to be grown. It adds a little more green space to the city's limited natural environment.

4. Are you aware of any enforcement proceedings connected to this site? **No**
If so please supply details:

5. Is this a Protected Structure or within the curtilage of a Protected Structure?

If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority?

6. Was there previous relevant planning application/s on this site?
If so please supply details:

7. APPLICATION DETAILS

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

(a) Floor area of existing/proposed structure/s	22 sq m
(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, please provide floor areas. (sq m)
(c) If concerning a change of use of land and / or building(s), please state the following:	
Existing/ previous use (please circle)	Proposed/existing use (please circle)
Previous Use: Roof	Existing Use: Deck

7. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure	A. Owner <input checked="" type="checkbox"/>	B. Other
Where legal interest is 'Other', please state your interest in the land/structure in question		
If you are not the legal owner, please state the name of the owner if available		

8. I / We confirm that the information contained in the application is true and accurate:

Signature: Walter O'Grady

Date: 15th June 2023

ADVISORY NOTES:

The application must be accompanied by the required fee of €80

The application should be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.

Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question.

The application should be sent to the following address:

**The Development Management Section, Community, Culture & Placemaking
Directorate, Cork City Council, City Hall, Anglesea Street, Cork.**

- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any person issued with a declaration may on payment to An Bord Pleanála refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.
- In the event that no declaration is issued by the Planning Authority, any person who made a request may on payment to the Board of such a fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued by the Planning Authority.

The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Act 2000 as amended, or Planning and Development Regulations 2001 as amended.

DATA PROTECTION

"Cork City Council is committed to fulfilling its obligations imposed by the Data Protection Acts 1988 to 2018 and the GDPR. Our privacy statement and data protections policy is available at <https://www.corkcity.ie/en/council-services/public-information/>

We request that you read these as they contain important information about how we process personal data.

Surveyed 1974
Revised 2015
Levelled 1983

Land Registry Compliant Map



566112

572307

ITM CENTRE PT COORDS

566228,572221

DESCRIPTION

MAP SHEETS

1:1000
6382-08



Produced by National Map Services,
Unit 7, South Ring Business Park,
Kinsale Road,
Co. Cork
On behalf of Ordnance Survey Ireland,
Phoenix Park, Dublin 8.

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Shuíthéiríocht Ordánais Éireann agus
Rialtas na hÉireann.
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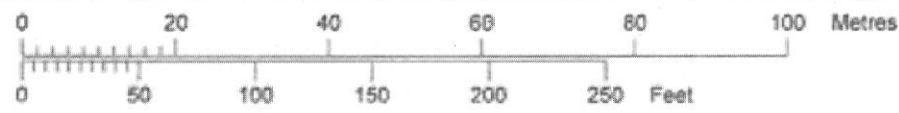
Gach ceart coimeáil. Ní ceadnách aon duine
den treiseacht seo a chloipeáil, a athscríobú nó
a thráchtar in aon form ná ar aon bhealach gan
cead i scríobáil roimh ré ó dhlí an tAicteoir.
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572135



Scale: - 1:1,000
Scála: - 1:1,000



Plot Ref. No. 25268672_3_1
Plot Date 20-JUN-2016

566112
2135
566112

566112
572307
572135
566345

Panoramic Photo from the Deck

The west neighbour's first floor level deck. It's level is 0.25m above my deck.

The north neighbour's garage. It's floor level is 0.3m above my deck.

The north neighbour's kitchen. It's floor level is c.1.5m above my deck.

Derelict site

The 2nd east neighbour's first floor level deck.



This photo shows the effect of the natural ground levels and steep gradients of the area. This includes:

- All the back gardens and decks of the houses 271-275 being at first floor level.
- The north neighbour's house overlooking all the back gardens.
- The lack of back yard privacy that the natural gradient allows. This is understood and accommodated by the owners of these houses.
- Each neighbour (except the derelict site) consistently using decks as a method to create flat outdoor spaces.

This photo also shows that by using the flat roof for the flat outdoor space allowed the garden area to remain natural and grow plants and possibly other vegetation.

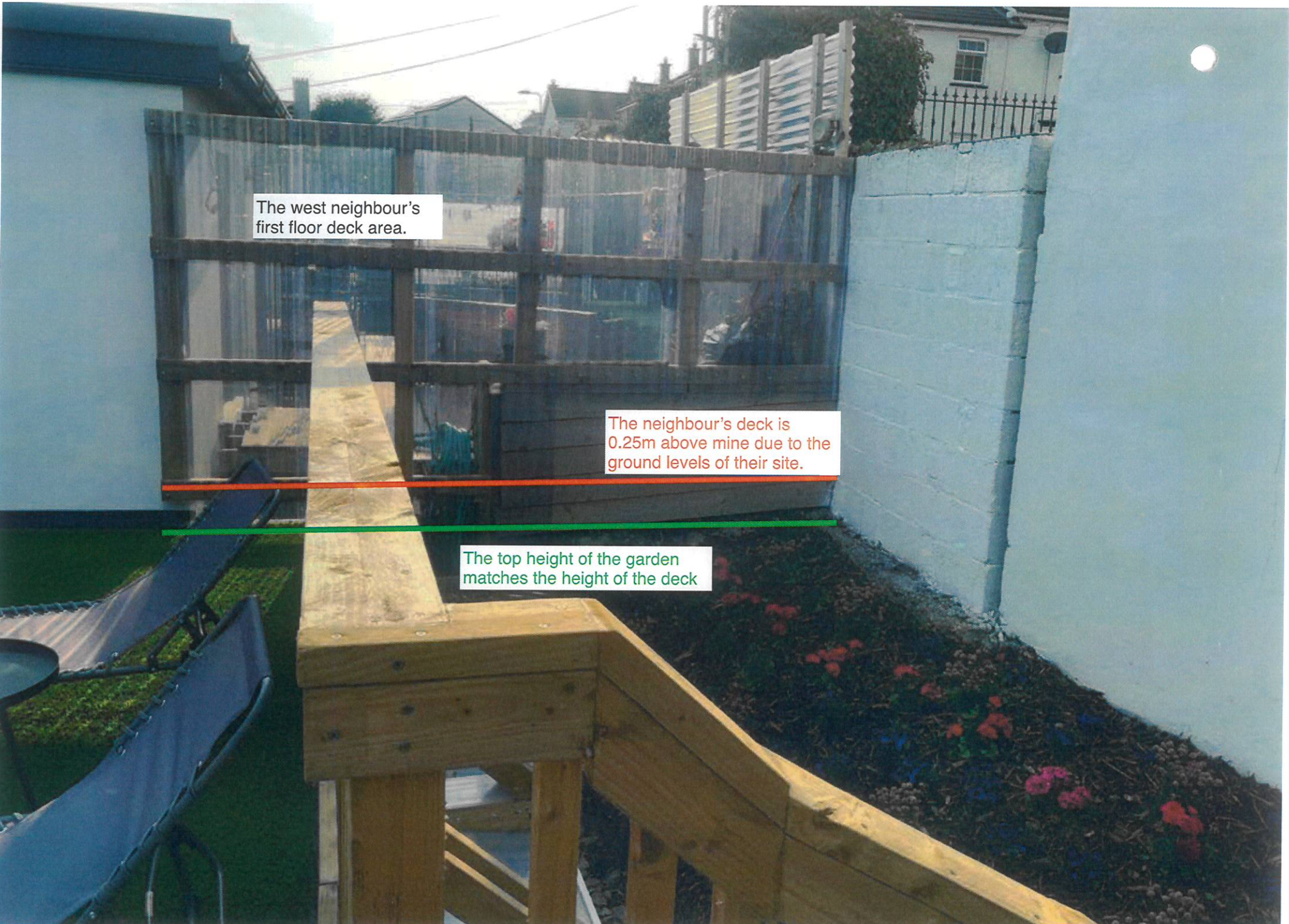


The west neighbour's deck level is 0.25m above my deck due to the gradient of their site.

The north neighbour's footpath & garage ground floor level is 0.3m above my deck.

My garden height matches my deck height.


The east neighbour's garden matches the profile of my garden (not shown here).



The west neighbour's first floor deck area.

The neighbour's deck is 0.25m above mine due to the ground levels of their site.


The top height of the garden matches the height of the deck



The north neighbour's ground floor garage is at first floor level relative to my house.

The east neighbour's garden is at the same level and gradient as my garden.

The 2nd east neighbour has a similar first floor level deck due to the gradient of their site.

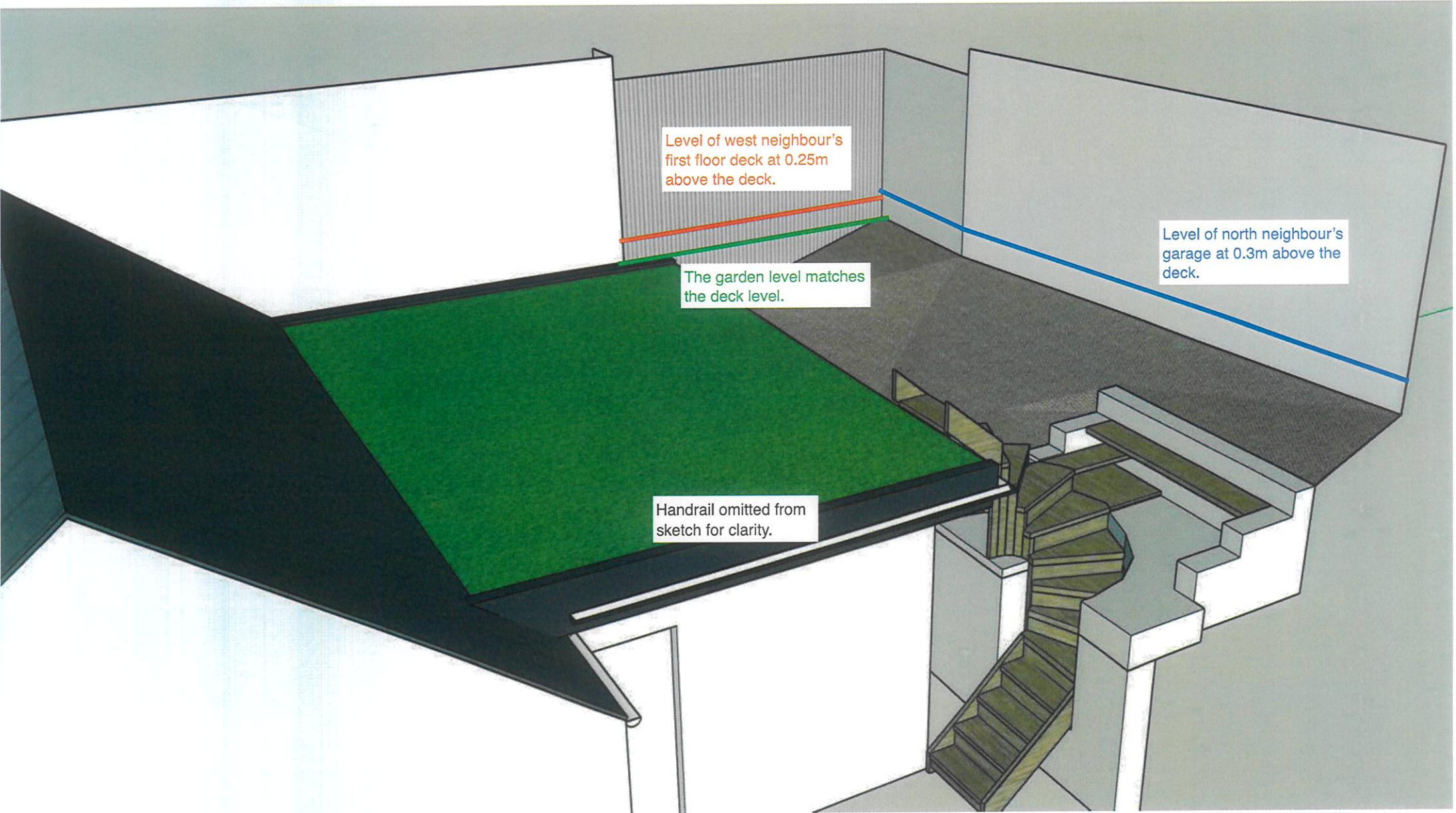


The north neighbour's ground floor kitchen and back garden overlooking all south neighbours due to steep gradient of the area. Their ground floor level is approx. 1.5m above my deck.

The 2nd east neighbour's garden/terrace area. It is slightly lower than my deck due to the gradient of the area.

The east neighbouring derelict house and garden. It has similar heights and gradients to my site.

3D Sketch of Deck



Level of west neighbour's first floor deck at 0.25m above the deck.

Level of north neighbour's garage at 0.3m above the deck.

The garden level matches the deck level.

Handrail omitted from sketch for clarity.